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JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 496

JOHN E. POTTHARST, SR.,

Appellant,

versus

RICHARDSON & BASS (LOUISIANA ACCOUNT), THE BOARD OF COMMISSIONERS OF THE ORLEANS LEVEE DISTRICT, PLAQUEMINES PARISH POLICE JURY, AS GOVERNING AUTHORITY OF GRAND PRAIRIE LEVEE DISTRICT, DELTA DEVELOPMENT COMPANY, INC.,

Appellees.

Appeal from the Supreme Court of Louisiana.

MOTION OF ORLEANS LEVEE BOARD, APPELLEE, TO DISMISS THE APPEAL AND BRIEF IN SUPPORT THEREOF.

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Appeal from the Supreme Court of Louisiana.

MOTION OF ORLEANS LEVEE BOARD, APPELLEE, TO DISMISS THE APPEAL AND BRIEF IN SUPPORT THEREOF.

May It Please the Court:

Appellee, Board of Levee Commissioners of the Orleans Levee District (hereinafter referred to as Orleans Levee Board) moves the Court to dismiss the appeal taken herein by John E Pottharst, Sr., on the grounds that:

1. The appeal does not present a substantial federal question; and

2. The judgment of the Louisiana Supreme Court rests upon an adequate nonfederal basis.

The appellant-intervenor, John E. Pottharst, Sr., was not an original party to the concursus proceeding which was filed in the 25th Judicial District Court for the Parish of Plaquemines by Richardson & Bass (Louisiana Account). The plaintiff in the concursus proceeding claimed that it was the holder of two mineral leases, one having been granted by the Grand Prairie Levee District, and the other granted by the Orleans Levee Board.

The plaintiff sought leave under Louisiana Revised Statutes, Title 13, Section 4811 (Act 123 of 1922), to deposit in the registry of the court the proceeds from the sale of oil and gas from the wells located on the unit which included in part the South half of Section 18, Township 18 South, Range 16 East.

The initial deposit by the plaintiff in the concursus proceeding at the time the suit was filed on April 21, 1952, was $67,215.32, and under the applicable order of the District Court the monthly runs which accrued each month and attributable to this suit were deposited in the

registry of court so that at the time of the trial of this case there was on deposit an amount in excess of $200,000.00.

The appellant herein filed his petition of intervention on October 28, 1953, wherein he claimed to be the holder of ten $1,000.00 bonds issued by the Grand Prairie Levee District on October 1, 1938, as part of a total authorized issue of $50,000.00. Intervenor claimed in his petition of intervention that if Act 311 of 1942 (Louisiana Legislature) divested the Grand Prairie Levee District of any property that it owned at the time that the bonds were issued, then the Act was unconstitutional and would impair the obligation of his contract in violation of Section 15, Article 4 of the Louisiana Constitution, and of Section 10, Article 1, of the Constitution of the United States. An exception of no right or cause of action and an exception that the petition of intervention sought to raise unauthorized new issues was filed by the Orleans Levee Board but was overruled by the District Court.

CLAIM OF IMPAIRMENT OF CONTRACT.

The only decision of the Louisiana Supreme Court to be considered in the present appeal on the question of impairment of contract is that decision rendered on February 20, 1956, upon rehearing, wherein the Supreme Court had granted to the intervenor a rehearing for the specific purpose of examining the correctness of the ruling in the original opinion. That portion of the opinion is contained on pages 58 and 59 of appellant's brief, and for convenience we quote the following language:

"Being doubtful of the correctness of this ruling, we granted intervenor a rehearing on his argument that he is entitled to have it recognized that his bonds are secured by a mortgage on the land under lease. **However, as will be seen from the statement of intervenor's pleadings, it does not appear that he is seeking the relief demanded in this Court.** He makes no claim therein that his bonds are in default or that his rights as mortgagee of the land might be impaired by the outcome of this litigation or even that the issues in this case necessarily require that a determination be made of whether the transfer of the ownership of the lands in the Bohemia Spillway area from Grand Prairie to Orleans Levee Board by the 1942 Act impaired the security given him by law. **Actually, his only plea is that Grand Prairie is entitled to be recognized as owner of a 1/8th royalty interest in all production from the 1936 mineral lease and that, unless this is adjudged, the security of his bonds will be unconstitutionally diminished because Act 325 of 1938 provides that the bonds issued thereunder shall be secured, among other things, by the revenues and income of all lands owned by Grand Prairie Levee District.**

"Obviously, this provision relative to the bondholders' security in revenues from lands is applicable only to the mortgaged lands while they are owned by the Levee District. Grand Prairie had long since been divested of the land subject to the leases herein when production was obtained by Richardson & Bass and therefore none of the

revenue derived therefrom belongs to Grand Prairie or is subject to the payment of the bonds which are not even alleged to be in default. **Accordingly, as the case merely involves the recognition of ownership of certain oil production, there is no necessity and really no issue for determination respecting the rights of a bondholder of Grand Prairie Levee District to have recognition of his mortgage and any opinion expressed by us in this proceeding would be purely advisory.** Since the intervention could only be considered on the basis that the bondholder had an interest in maintaining Grand Prairie's position, the rejection of that Levee District's claim operates as ground for its dismissal." (Emphasis supplied.)

The rationale of the decision of the Louisiana Supreme Court is based upon adequate and sound legal procedural concepts under Louisiana law. There was no proper issue of impairment of contract or question of constitutional law considered by the Louisiana Supreme Court and there is no substantial federal question involved in this appeal.

The intervenor was not an original party to this suit and could not properly be one. The purpose of a concursus proceeding is to permit an innocent stakeholder to deposit in the registry of court certain funds or monies which may be claimed by two or more persons and to thereby relieve the stakeholder from any personal liability in the premises. See Louisiana Revised Statutes, Title 48, Section 4811 (Act 123 of 1922).

If parties have adverse claims to land, then the courts of the state (and in proper instances the federal courts) are available for them to seek judicial determination of their rights. By instituting such suits, the parties may determine and limit the scope thereof. On the other hand, interpleader is an equitable proceeding designed solely for the protection of an innocent stakeholder, and for this reason the stakeholder has no right or interest to provoke litigation between others further than is absolutely necessary to protect the stakeholder.

In *Standard Oil Company of Louisiana v. Futral*, 204 La. 215, 15 So. (2d) 65 (1943), the Supreme Court of Louisiana pointed out:

> "Since this is a concursus proceeding involving only the rights of claimants to the proceeds of certain oil extracted from the land, and since there was no oil extracted from that portion of the land which Futral alleged was 'segregated and separated' from the main tract by the railway and the highway, the question whether the description in the sale by Futral to his vendees properly included the land so 'segregated' was not an issue involved in the case." (15 So. (2d) 78).

One of the conditions of an interest so as to justify an intervention lies in the right of intervenor to file a separate and independent action. *State Board of Medical Examiners v. McHenry*, 69 So. (2d) 592 (La. App. (2d) Cir. 1953). If instead of filing such separate action, a person chooses to intervene then he cannot raise issues which the parties themselves have not raised, but the

intervenor must take the suit as he finds it, since, if he wants to interject new issues and have new matters adjudicated, he has recourse to a separate suit. *State ex rel. Temple v. Vernon Parish School Board*, 178 So. 176, 178 (La. App. 1st Cir. 1938); *Bonnabel v. Police Jury, Parish of Jefferson*, 216 La. 798, 44 So. (2d) 872 (1950).

In the case under consideration, the intervenor, Pottharst, prayed for leave to intervene to "resist any and all pretentions of the Board of Levee Commissioners of the Orleans Levee District to the ownership of any part of the lands described in plaintiff's petition, or to any income and revenue derived therefrom". The intervenor prayed for citation and **"that Grand Prairie Levee District be recognized as the owner of the lands described in plaintiff's petition, entitled, as such, to all income and revenue accrued and to accrue under the mineral lease described in said petition."** (See prayer of intervenor's petition.)

The opinion on rehearing of the Supreme Court of Louisiana correctly pointed out that the relief sought by intervenor was not to have a recognition that his bonds are secured by a mortgage of the lands under lease. The opinion further pointed out that intervenor made no claim that his bonds are in default or that his rights as mortgagee of the land might be impaired by the outcome of the litigation, or even that the issue in the case required a determination of whether Act 311 of 1942 impaired the security granted to intervenor.

The Supreme Court of Louisiana summarized intervenor's case when it stated that intervenor's only plea was that Grand Prairie Levee District should be recog-

nized as owner of a one-eighth royalty interest, and that unless this were adjudged, the security of his bonds would be unconstitutionally diminished. The Court pointed out that the production which was the subject matter of the concursus proceeding **was from wells drilled long after Grand Prairie Levee District had been divested of this land by Act 311 of 1942.** The Court correctly concluded that none of the revenue derived therefrom belonged to Grand Prairie Levee District, nor was it subject to the payment of the bonds which had not even been alleged to have been in default. Since the intervention could only be considered on the basis that the bondholder had an interest in maintaining Grand Prairie Levee District's position, the rejection of the claim of that Levee District operated as a ground for the dismissal of the petition of intervention.

A correct analysis of the issues involved in the concursus proceeding clearly indicates that there was no question involved as to the rights of any bondholder, and particularly the intervenor-appellant herein. The concursus proceedings only involved the distribution of a proportionate share of monies derived from the sale of oil and gas from a production unit which included a portion of the South half of Section which was claimed both by Grand Prairie Levee District and Orleans Levee Board. The bondholder (appellant-intervenor) admittedly had been receiving interest on the twenty year bonds as such interest became due and the bonds were not in default. The bonds were issued under date of October 1, 1938, and as callable bonds were due on or before October 1, 1958, subject to call ten years after date. Intervenor

was not claiming a lien or privilege on the funds deposited in the concursus proceeding. (Testimony Pottharst p. 85)

Neither was the intervenor claiming that his bonds were unpaid or in default nor that he was entitled to be paid out of any part of the money deposited in the registry of the court. Neither was the intervenor claiming that any part of the monies should be set aside or withheld in the registry of the court until the maturity date of the bonds in 1958.

As a practical matter, as will be borne out by the entire record which was before the Louisiana Supreme Court for consideration, Grand Prairie Levee District had received over $2,214,398.54 for the period from January 10, 1939, through December 23, 1949, from oil and gas royalties on various other lands which it owned and which were in no wise involved in the controversy which was the subject matter of the concursus proceeding. In addition, the record will bear out that the Police Jury of Plaquemines Parish as governing authority of the Grand Prairie Levee District had received over $1,500,000.00 for the account of the Grand Prairie Levee District representing oil royalties on various other lands owned by the Grand Prairie Levee District for the period from January, 1950, to January, 1954.

Furthermore, under Act 47 of the Louisiana Legislature for the year 1948, the Police Jury of Plaquemines Parish was given the right to become the governing authority of the Grand Prairie Levee District, provided it shall assume the bonds of the Grand Prairie Levee Dis-

trict as authorized in said Act, as well as all other indebtedness of said Grand Prairie Levee District as authorized by existing laws. Such assun_ :ion of bonded indebtedness was necessarily made since the Police Jury of Plaquemines Parish appeared in this concursus proceeding as governing authority of the Grand Prairie Levee District.

The $50,000.00 bond issue of which the intervenor held $10,000.00 in bonds was authorized by Act 325 of 1938, a copy of which Act is contained in the appendix to appellant's brief. By reference to the provisions of the Act, it will be seen that the bond issue was secured by **taxation** and by mortgage, sale and revenues of all lands owned by the Grand Prairie Levee District. Act 25 of 1938 merely amended Act 24 of 1898 which created the Grand Prairie Levee District. Section 17 of Act 24 of 1898 provides that if an officer charged with the duty of collecting or disbursing revenues should fail or refuse to perform such duties, then the holder of any bonds may apply for a mandamus to compel such officer to discharge his duties. It is apparent that in the event of a bond default, the appellant has an adequate legal redress to compel the assessment of taxation to pay the bonds.

Since there has not and cannot be any showing by intervenor that the awarding of the funds in the concursus proceedings has impaired the obligation of any bond contract of the intervenor, it necessarily follows that there has not been any substantial federal question raised in these proceedings.

In *Port of Mobile v. Watson*, 116 U. S. 289, 6 S. Ct. 398 (1886) this Court recognized that no court had there-

tofore held that impairment of obligation resulted from a change in the tax structure **unless the change in fact caused a default in constitutional fulfillment.**

The rule has more recently been stated by this Court in *Richmond Mortgage & Loan Corporation v. Wachovia Bank & Trust Company, et al.*, 300 U. S. 125, 57 S. Ct. 338 (1937) as follows:

> "The Legislature may modify, limit, or alter the remedy for enforcement of a contract without impairing its obligation, but in so doing, it may not deny all remedy or so circumscribe the existing remedy with conditions and restrictions as seriously to impair the value of the right. The particular remedy existing at the date of the contract may be altogether abrogated if another equally effective for the enforcement of the obligations remains or is substituted for the one taken away. The matter in dispute is whether the questioned enactment falls beyond the boundary of permissible regulation of the remedy for enforcement of the appellant's contract."

This same principle was recognized by the Louisiana Supreme Court in the case of *Board of Commissioners of Atchafalaya Basin Levee District v. C. Lagarde*, 167 La. 612, 120 So. 25 (1928) wherein the court said:

> "But plaintiff urges that the repealing act should not be so interpreted as to violate the obligation of a contract, and points out that the Atchafalaya Basin Levee District has issued bonds, and that the taxes here involved are intended for the

purpose of paying, in part, the bonds issued, and are dedicated to that end. It is a fundamental principle that no law can be passed and permitted to stand that violates the obligation of a contract. However, we are not prepared to hold that the repeal of the laws authorizing the levy and collection of this produce tax will affect the payment, in due course, of the bonds issued. The district has other means provided it and set aside for that purpose. It is fair to presume that the Legislature considered this question before passing the repealing act and found that the laws authorizing the collection of the taxes involved herein could be repealed without detriment to the bonds issued." (120 So. 29)

In *Wells v. Blackman*, 121 La. 394, 46 So. 437 (1908) the Louisiana Supreme Court recognized that a mortgagee should not be permitted to intervene in a suit which did not involve the validity of his mortgage. The Court stated:

"Eugene V. Weems intervenes, alleging that he holds a mortgage for $18,600.00, granted February 9, 1904, by defendant and his major children on the whole of Wellswood Plantation, and, adopting the allegations of the other intervention, he prays that plaintiff's demands be rejected, or that they take the property claimed by them subject to his mortgage. As has been stated, **the validity of the mortgage thus declared on has not been put to issue here, and as the debt to secure which it was granted has not yet matured the intervention has**

nothing to rest on. Moreover, from all appearances, it is amply secured by property which belongs to the mortgagors and is not involved in this controversy." (46 So. 447) (Emphasis supplied)

Act 311 of 1942 has been previously interpreted by the Supreme Court of the State of Louisiana as dedicating the public land in the Bohemia Spillway. *Emery v. Orleans Levee Board*, 207 La. 386, 21 So. (2d) 418 (1945). Subsequent to the rendition of that opinion the petitioners in the *Emery* case applied to this Court for a writ of certiorari on the ground that the act creating the Bohemia Spillway (Act 99 of the Louisiana Legislature for 1924) was in violation of the 5th and 14th Amendments of the Constitution of the United States. The application for such writs was denied. (325 U. S. 879, 65 S. Ct. 1572).

In the present instance the intervenor-appellant is claiming an impairment of the obligation of contract, although no showing has been made that the value of his bond contract has been diminished or that the said bonds are in default or even that there is any likelihood that they may be in default. As a practical matter, no such showing could be made, and the intervenor certainly has access to the courts if and when an occasion should arise which would warrant the institution of such a suit However, to allow the intervenor to come into a concursus proceeding and attempt to raise this constitutional question when the only relief sought by him is the recognition of the claim of Grand Prairie Levee District to the funds deposited in the court is merely to permit the intervenor to raise moot questions beyond the scope of the particular judicial proceedings under review.

Furthermore, Act 311 of 1942 is patently legislation which involves the exercise of the police power of the State of Louisiana in protecting the titles, ownership and possession of lands stated within a spillway or waste weir. Act 99 of 1924 provided for the creation of this spillway, and the Legislature designated the Orleans Levee Board as the state agency to construct and maintain this spillway, which was a safety measure to protect the City of New Orleans from overflow flood waters.

Act 246 of 1928 recreated the Grand Prairie Levee District and located it in an area outside of and below the area of the Grand Prairie Levee District. In 1942 the Legislature passed Act 311 which confirmed and quieted the Orleans Levee Board in the title, ownership, and possession of all public lands in the Bohemia Spillway when it was constructed by said Levee Board in obedience to Act 99 of the Legislature of 1924. (See original opinion of the Louisiana Supreme Court, pages 33, 34, appendix appellant's brief).

Even if it could be established (1) that there had been an unwarranted impairment of the obligation of appellant's bonds, and (2) that such issue was properly presented in a concursus proceeding, **both of which contentions are emphatically denied,** then it does not necessarily follow that there has been an unconstitutional impairment. The State of Louisiana in enacting Act 311 of 1942 was properly exercising its police power so as to assure the continuation and maintenance of a spillway which had been constructed in 1925 by the Orleans Levee Board in order to protect the lives and safety of the people of New Orleans. Under such circumstances prop-

erty rights must give way to the exercise of the police power by the sovereign state in a proper case, since neither the Legislature nor the people can bargain away the public health, the public morals, or the public safety. See *New Orleans Gas Light Company v. Drainage Commission*, 197 U. S. 453, 25 S. Ct. 471 (1905); *Chicago & Alton Ry. Co. v. Tranbarger*, 238 U. S. 67, 35 S. Ct. 678 (1915).

In the *Tranbarger* case, *supra*, this Court in discussing the effect of the contract clause and the due process clause, said:

> "It is established by repeated decisions of this court that neither of these provisions of the Federal Constitution has the effect of overriding the power of the state to establish all regulations reasonably necessary to secure the health, safety, or general welfare of the community, that this power can neither be abdicated nor bargained away, and is inalienable even by express grant; and that all contract and property rights are held subject to its fair exercise." (35 S. Ct. 682)

It is submitted, however, that it is not necessary to apply this doctrine of inherent police power, since the issue of contract impairment was not and could not be raised properly by intervenor in this concursus proceeding. Neither was such issue passed upon by the Louisiana Supreme Court which pointed out that in view of the limited relief sought by the pleadings of intervenor its opinion in that respect could only be advisory.

This is not a case in which probable jurisdiction should be noted. The decision of the Louisiana Supreme

Court rests upon an adequate non-federal basis and in conformity with the prior jurisprudence of the state court. To require the review on appeal of the alleged contract impairment, not involved in the decree and opinion of the state court, can only cause unwarranted expense and delay to the litigants, particularly where there has been no showing of default in constitutional fulfillment.

QUESTION OF DENIAL OF DUE PROCESS OF LAW.

Intervenor-appellant is claiming belatedly that he has been denied due process of law afforded by the 14th Amendment of the Federal Constitution because the Louisiana Supreme Court "accepted" the legislative declarations contained in the preamble to Act 311 of 1942. The constitutional claims which are now being asserted by intervenor-appellant were raised for the first time by appellant by the filing of a special plea of constitutionality on September 9, 1955, which was two months and nine days after the rendition of the original decree and opinion of the Supreme Court of Louisiana on June 30, 1955.

Appellant's present contentions are necessarily predicated upon the erroneous and unsupported assumptions that (a) the prefatory statements in the preamble of Act 311 constituted the *ratio decidendi* of the case and (b) that the intervenor was prejudiced thereby in presenting his defense in the trial court. An examination of the two opinions of the Supreme Court of Louisiana, as well as a reading of Act 311 of 1942, should readily disclose that appellant's argument at best is an illusory one.

The case of *Manley v. State of Georgia*, 279 U. S. 1, 49 S. Ct. 215 (1929), which is strongly relied upon by appellant, involved a criminal statute of Georgia wherein one of the **enacting** sections stipulated that every insolvency of a bank shall be deemed fraudulent, provided, however, that the defendant in a case arising under that section could repel the presumption of fraud by showing that the affairs of the bank had been fairly and legally administered. It is clear, therefore, that what this Court had under consideration in the *Manley* case **was a legislative presumption created in the enacting body of the legislative act** which raised a presumption of guilt subject to rebuttal under certain circumstances. This Court correctly stated that if the presumption is not unreasonable and is not made conclusive of the rights of the person against whom raised, it does not constitute a denial of due process of law. It was properly held, however, in that case that the presumption of guilt did not rest upon any definite basis, and consequently was unreasonable and arbitrary and in violation of the due process clause.

In the case under consideration it is patent that Act 311 of 1942 does not raise any presumptions. The **preamble** to Act 311 of 1942 is merely a statement of intent and purpose by the Legislature and it has been held in Louisiana that the preamble to an act is merely a prefatory statement which is without force in a legislative sense. In *City of New Orleans v. Administrators of Tulane Educational Fund*, 193 La. 297, 190 So. 560 (1939), the Supreme Court of Louisiana, in discussing this precise point, said:

> "The preamble is without force in a legislative sense, being nothing more than a prefatory

> statement by the legislature of its reason for giving such power to the Board of Administrators. It neither limits nor controls the scope of the application of the enacting clauses of the statute." (190 So. 562) (Emphasis supplied)

The only **controlling** part of Act 311 of 1942 is the **enacting** clause which is contained in Section 1 of the Act and which is set forth on page 68 of appellant's brief. That section unequivocally provides that the right, title, ownership, and possession of the Orleans Levee Board to all public lands in the area of the Bohemia Spillway was confirmed, quieted, and acknowledged. It is clear that Section 1 does not raise presumptions as to title, but to the contrary is an unambiguous legislative enactment transferring a title of public lands within a designated area to a state agency, namely, the Orleans Levee Board.

The original opinion of the Louisiana Supreme Court, which is contained on pages 28 to 44 inclusive of appellant's brief, held that in 1942 the Louisiana Legislature by Act 311 of 1942 granted and confirmed the title of the Orleans Levee Board to all public lands in the spillway area in the Parish of Plaquemines. A reference by the author of the majority opinion to the preamble of the 1942 Act was only *dicta* and no efficacious argument can be made that such *dicta* constituted any part of the rationale of the Court's decision.

Upon rehearing, the majority opinion of the Louisiana Supreme Court reaffirmed that Act 311 of 1942 constituted a legislative grant to the Orleans Levee Board

and invested that Board with legal title without the necessity of formal act of conveyance. A reading of the opinion of the Court on rehearing will readily disclose that its decision is based solely upon the enacting clause of Act 311 of 1942 and not upon any statements contained in the preamble to the Act. In fact, there is no reference to the prefatory statements contained in the preamble to Act 311.

The only purpose of Orleans Levee Board in offering in evidence in the trial of the case a certified copy of Act 311 of 1942 was to avoid any contention that Act 311 was a local or special law and that the Court could not take cognizance of a local law. The trial court sustained the objection to the admissibility of the act itself which was of no moment, however, since the Supreme Court recognized that Act 311 was not a local or special law. (See Court's opinion, page 41, Appellant's Brief). Also see *Knapp, et al., v Jefferson-Plaquemines Drainage District*, 224 La. 105, 68 So. (2d) 774 (1953).

There is clearly no substance in the claim of appellant as to deprivation of due process. Act 311 of 1942 creates no irrebuttable presumptions and the only complaint of appellant is in regard to the prefatory statements contained in the preamble to the Act. Such prefatory statements formed no part of the decree of the Louisiana Supreme Court and a reading of the two decisions of the Supreme Court will clearly bear this out.

It is elementary that jurisdiction cannot be founded upon surmise and that it must appear from the record that not only that a federal question or constitutional right was involved, but that such federal question or

infringement of constitutional right must have a substantial foundation and not depend solely upon unsupported averment. If the rule were otherwise, then a claim of constitutional deprivation could be claimed in almost any case and the jurisdiction of this Court invoked simply for the purpose of delay. *Lynch, et al., State Tax Commissioners of New York v. People of New York, ex rel. Pierson*, 293 U. S. 52, 55 S. Ct. 16 (1934); *Buck, et al., v. People of State of California*, 343 U. S. 99, 72 S. Ct. 502 (1952); *City of New Orleans, et al., v. New Orleans Water Works Co., et al.*, 142 U. S. 79, 12 S. Ct. 142 (1891).

CONCLUSION.

Wherefore, it is respectfully submitted that this Court is without jurisdiction of this appeal and appellee, Board of Levee Commissioners of the Orleans Levee District, moves the Court to dismiss the appeal herein taken by John E. Pottharst, Sr., for the reasons more fully set forth in this motion of dismissal and without the necessity of further argument.

Respectfully submitted,

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CERTIFICATE OF SERVICE.

I, Kalford K. Miazza, a membe of the Bar of the Supreme Court of the United States and one of the attorneys for the appellee herein, do hereby certify that on the 31st day of October, 1956, a copy of this motion to dismiss the appeal and brief in support thereof was served upon William M. Campbell, Jr., counsel for intervenor-appellant, by delivering a copy to his office, 1212 Richards Building, New Orleans, Louisiana. I also certify that on the same day I have mailed copies to Ledoux Provosty, Jr., counsel for Richardson & Bass (Louisiana Account), 601 Guaranty Bank Building, Alexandria, Louisiana; Leander H. Perez, 2307 American Bank Building, New Orleans, Louisiana, and Charles J. Rivet, Richards Building, New Orleans, Louisiana, counsel for the Police Jury of the Parish of Plaquemines as governing authority of Grand Prairie Levee District; S. W. Plauche, Jr., Pioneer Building, Lake Charles, Louisiana, counsel for Delta Development Company, Inc.